



California Fair Political Practices Commission

October 11, 1989

Iris Yang
McDonough, Holland and Allen
555 Capitol Mall, Suite #950
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-89-484

Dear Ms. Yang:

This is in response to your request for advice regarding the responsibilities of Mayor Caroline Constable under the Political Reform Act (the "Act").¹ Because your question does not involve a specific pending decision, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed.)²

QUESTION

On July 25, 1989, Mayor Constable sold 225 shares of stock in a bank to her parents. The bank is located in the proposed redevelopment area in the City of Clearlake (the "city"). May Mayor Constable participate in decisions regarding the proposed redevelopment area?

CONCLUSION

Mayor Constable may participate in decisions regarding the redevelopment plan unless the decisions will result in

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

Ms. Constable's personal expenses, income, assets, or liabilities increasing or decreasing by at least \$250, or will affect her parent's investment in the bank by more than \$1,000.

FACTS

The City of Clearlake is in the process of preparing a redevelopment plan which includes the central business area of the city. Mayor Constable has 75 shares of common stock in the Clear Lake National Bank (the "bank"). The bank is located within the project area. On July 25, 1989, Mayor Constable sold 225 shares of common stock in the bank to her parents at \$9.00/share. According to the President and CEO of the bank, the bank's common stock has a fair market value of \$9.00 per share.

ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

* * *

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a) and (c).

Mayor Constable is a public official. (Section 82048.) Since she sold 225 shares of stock in the bank, she now has an investment in the business entity of less than \$1,000.³ Section

³ In reaching this conclusion, we assume she has not retained an option to repurchase the shares of stock. We also caution that if the fair market value of the 75 shares of stock which Mayor Constable retained increases to \$1,000 or more, she will have an economic interest in the bank.

82030(a) defines income to include "proceeds from any sale." Thus, the entire amount she received in the transaction, regardless of her profit, if any, is deemed to be income to her. Further, since she sold the shares of stock to her parents, people she knew, rather than selling them on the stock exchange, her parents are the source of this income to her. (Section 82030(b)(12).) Accordingly, she may not make, participate in, or use her official position to influence a governmental decision which will have a reasonably foreseeable material financial effect on herself or on her parents, which is distinguishable from the effect on the public generally.⁴

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Community Development Commission (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

The purpose of any redevelopment plan is to promote sound development and redevelopment of blighted areas. The anticipated result of redevelopment is an increase in property values and an improved business climate within the project area, which benefits the community as a whole. (In re Oglesby (1975) 1 FPPC Ops. 71, copy enclosed. See also Downey Cares v. Downey Community Development Commission, supra). Accordingly, it is reasonably foreseeable that the decisions regarding the proposed redevelopment plan for the city will have an economic effect on the bank and indirectly on her parents.

⁴ Although your letter does not raise this issue, please note that if Ms. Constable received dividends from the bank on the shares of stock she owned, she may be disqualified from participating in certain decisions which may have an economic effect on the bank. Section 82030(b)(5) excludes from the definition of income any dividends, interest, or other return on a security which is registered with the Securities and Exchange Commission. Thus, if the shares of bank stock owned by Ms. Constable are not registered with the Securities and Exchange Commission, any dividends she may have received, including dividends on the shares subsequently sold to her parents, constitute income to her. Accordingly, Ms. Constable must determine, pursuant to Section 87103(c), whether she must disqualify herself from participating in certain decisions which may have a reasonably foreseeable and material financial effect on the bank.

Materially

Regulation 18702 (copy enclosed) sets forth the guidelines for determining whether the effect of a decision on an official's economic interest is "material," as required by Section 87103. Subdivision (a)(4) of Regulation 18702.1 (copy enclosed) states that the effect is material as to Mayor Constable if the decision will result in the personal expenses, income, assets, or liabilities of Ms. Constable, or her immediate family, increasing or decreasing by at least \$250. In addition, Mayor Constable's parents will be indirectly affected by the decisions regarding the proposed redevelopment plan. In such circumstances, the effect of the decision is material if the decision will affect her parents' investment in the bank by more than \$1,000. (Regulation 18702.6, copy enclosed.)

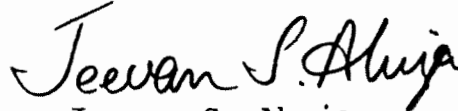
Public Generally

Even if the reasonably foreseeable financial effect of a decision is material, disqualification is required only if the effect is distinguishable from the effect on the public generally. (Section 87103.)⁵ A material financial effect is distinguishable from its effect on the public generally unless the decision will affect Mayor Constable's parents' interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. (Regulation 18703, copy enclosed.)

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

KED/JSA/aa

Enclosures

⁵ For the City of Clearlake, the public consists of all residents of the city.

McDONOUGH, HOLLAND & ALLEN

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P. O. BOX 3448
OAKLAND, CALIFORNIA 94609
(415) 547-0106

IRIS P. YANG

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AUG 16 9 20 AM '89

August 14, 1989

Kathryn E. Donovan
General Counsel
Fair Political Practices Commission
428 "J" Street, Suite 800
P. O. Box 807
Sacramento, CA 95804

Re: Request for Advice

Dear Ms. Donovan:

The purpose of this letter is to request advice on the ability of the mayor of the City of Clearlake to participate in decisions regarding the proposed redevelopment plan for the City.

The City of Clearlake is in the process of preparing a redevelopment plan which includes the central business area of the city. The mayor of Clearlake, Caroline Constable, has not been participating in past decisions regarding the redevelopment plan because of her ownership of 300 shares of common stock in Clear Lake National Bank. The stock is worth more than \$1,000. The bank is located within the project area.

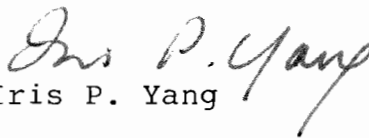
Mayor Constable and her husband sold 225 shares of the stock on July 25, 1989. They sold the stock to Mayor Constable's parents, who live outside of Lake County, for \$9.00 per share. Her parents are existing shareholders of Clear Lake National Bank. According to the President and Chief Executive Officer of Clear Lake National Bank, the bank's common stock has a market value of \$9.00 per share and a book value of \$10.85 per share. Thus, Mayor Constable has sold the stock for market value to individuals who do not live or do business in the City of Clearlake. The remaining 75 shares which Mayor Constable owns are worth less than \$1,000.

Kathryn E. Donovan
Fair Political Practices Commission
August 14, 1989
Page Two

Based on the above facts, may Mayor Constable now participate in decisions regarding the adoption of the redevelopment plan?

If you need any further information, please give me a call. Thank you for your assistance.

Very truly yours,


Iris P. Yang

IPY:pjp

cc: Daniel A. Obermeyer



California Fair Political Practices Commission

August 21, 1989

Iris P. Yang
McDonough, Holland & Allen
555 Capitol Mall, Suite 950
Sacramento, CA 95814

Re: Letter No. 89-484

Dear Ms. Yang:

Your letter requesting advice under the Political Reform Act was received on August 16, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh



California Fair Political Practices Commission

August 21, 1989

John L. Taylor
Board of Supervisors
Room 235, City Hall
San Francisco, CA 94102

Re: Letter No. 89-484

Dear Mr. Taylor:

Your letter requesting advice under the Political Reform Act was received on August 16, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeanette Turvill, in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, we will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

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Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh

84-489

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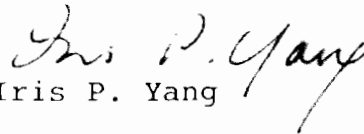
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Kathryn E. Donovan
Fair Political Practices Commission
August 14, 1989
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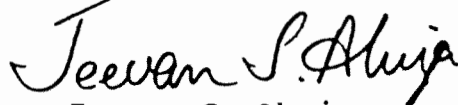
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I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

KED/JSA/aa

Enclosures

⁵ For the City of Clearlake, the public consists of all residents of the city.

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August 14, 1989

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Re: Request for Advice

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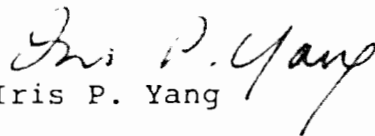
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Kathryn E. Donovan
Fair Political Practices Commission
August 14, 1989
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If you need any further information, please give me a call. Thank you for your assistance.

Very truly yours,


Iris P. Yang

IPY:pjp

cc: Daniel A. Obermeyer



California Fair Political Practices Commission

August 29, 1989

John D. Flitner
City Attorney
City of Rohnert Park
6750 Commerce Boulevard
Rohnert Park, CA 94927

Re: Your Request for Advice
Our File No. G-89-483

Dear Mr. Flitner:

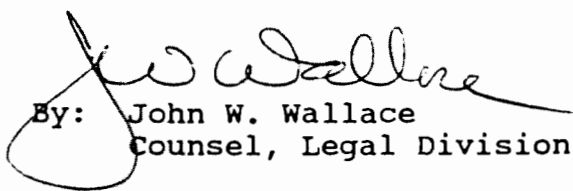
This is in response to your letter requesting assistance concerning Government Code Section 1090, et seq., and the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/}

This letter confirms the information that I provided to you on August 16, 1989. As I stated in our telephone conversation, the Commission has no jurisdiction to interpret or enforce Section 1090. The Commission's jurisdiction is limited to the Political Reform Act. Questions concerning Section 1090 should be addressed to the Attorney General's Office.

If you should have any questions concerning the Act, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

CITY OF ROHNERT PARK
6750 COMMERCE BOULEVARD
ROHNERT PARK, SONOMA COUNTY, CALIFORNIA 94927
TELEPHONE 795-2411

FPPC

AUG 16 9 23 AM '89

August 10, 1989

Diane M. Griffiths, Attorney at Law
General Counsel
California Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, California 95804-0807

Re: County of Sonoma request for advice
Your file No I-88-147

Dear Ms. Griffiths:

Your office was kind enough to send me a copy of Ms. Spitz's letter of May 27, 1988, to James P. Botz, Esquire, Sonoma County Counsel.

Does the opinion consider the impact of Government Code section 1090, et seq., and specifically §§1091, 1091.5, 1092, and 1126?

Thank you for your consideration in this matter.

Very truly yours,


JOHN D. FLITNER
City Attorney